

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

**JUN 19 2006**

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

BRIAN RICHARD SCHWEITZER, a/k/a  
Brian Richard Lance,

Defendant - Appellant.

No. 05-50450

D.C. No. CR-00-00057-VAP

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
Virginia A. Phillips, District Judge, Presiding

Submitted June 8, 2006\*\*  
Pasadena, California

Before: D.W. NELSON, RAWLINSON, and BEA, Circuit Judges.

Brian Richard Schweitzer was convicted in 2001 of assault upon a federal officer in violation of 18 U.S.C. § 111. He now appeals from the district court's

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

\*\* This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

decision to revoke his supervised release and sentence him to twenty-four months' imprisonment.

Schweitzer claims that, because the warrant for his arrest was not based on sworn allegations, the district court lacked jurisdiction under 18 U.S.C. § 3583(i) to revoke his supervised release after the period of supervised release had expired. *See United States v. Vargas-Amaya*, 389 F.3d 901, 906 (9th Cir. 2004). However, the district court did not need a warrant—sworn or unsworn—to revoke Schweitzer's supervised release because, at the time of Schweitzer's arrest and revocation hearing, the period of supervised release had not yet expired. *See* 18 U.S.C. §§ 3583(e)(3) & 3606; *United States v. Murguia-Oliveros*, 421 F.3d 951, 952–53 (9th Cir. 2005). Although Schweitzer's period of supervised release was originally scheduled to expire on November 25, 2004, the period was tolled for over three years while Schweitzer was in state custody. *See* 18 U.S.C. § 3624(e); *United States v. Schmidt*, 99 F.3d 315, 319 (9th Cir. 1996), *overruled on other grounds by United States v. Palomba*, 182 F.3d 1121, 1123 (9th Cir. 1999). Independently, the period of supervised release was tolled while Schweitzer remained a fugitive for having violated the conditions of his supervised release. *See Murguia-Oliveros*, 421 F.3d at 955. Both periods of tolling far exceeded the

interval between the originally scheduled expiration date and the date of the revocation hearing.

**AFFIRMED.**